Office-Supreme Court, U.S.
FILED
APR 5 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1962

No. 992

FRANK LAINO,

Appellant,

v.

PEOPLE OF THE STATE OF NEW YORK,

Respondent.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FOURTH JUDICIAL DEPARTMENT

STATEMENT AS TO JURISDICTION

EDWARD H. LEVINE
New York, New York
Counsel for Appellant

VERNON C. ROSSNER
New York, New York
With him on the Statement

32 CASE PRESS INC., 421 Hudson St., N. Y.—OREgon 5-4540

INDEX

	PAGE
Opinions below	1
Jurisdiction	2
Questions Presented	3
Statutes Involved	4
Statement of the Case	5
The Federal Questions Are Substantial	9
How the Federal Questions Were Preserved	15
Conclusion	16
Appendix	1a

CITATIONS

CASES:

Cohen v. *Hurley*, 366 U. S. 117	12, 13
Edwards v. *South Carolina*, 372 U. S. 229	13
Gideon v. *Wainright*, U. S. (decided March 18, 1963 but not yet officially reported)	13
Hamilton v. *Regents of University of California*, 293 U. S. 245	2
In re Anastaplo, 366 U. S. 82	13
King Manufacturing Co. v. *City Council of Augusta*, 277 U. S. 100	2
Knapp v. *Schweitzer*, 357 U. S. 371	12

PAGE

Lathrop v. *Donohue*, 367 U. S. 820 2

Mapp v. *Ohio*, 367 U. S. 643 13
McGowen v. *Maryland*, 366 U. S. 420 10

Palko v. *Connecticut*, 302 U. S. 319 13
People v. *Laino*, 17 A. D. 1029, not yet reported unofficially 2
People v. *Laino*, 12 A. D. 2d 880, 211 N. Y. S. 2d 716 6
People v. *Laino*, 10 N. Y. 2d 161, 176 N.E. 2d 571 ... 6

Regan v. *New York*, 349 U. S. 58 11

Twining v. *New Jersey*, 211 U. S. 78 ..... 12, 13

STATUTES:

New York General Municipal Law,
Section 103-b ..... 4, 6, 7, *passim*

28 U.S.C. § 1257(2) 2

28 U.S.C. § 2103 16

OTHER:

Message of Governor Rockefeller on approving bill for Section 103-b of General Municipal Law, McKinney's 1959 Session Laws of New York 10

IN THE

Supreme Court of the United States

October Term, 1962

No.

FRANK LAINO,

Appellant.

v.

PEOPLE OF THE STATE OF NEW YORK,

Respondent.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FOURTH JUDICIAL DEPARTMENT

STATEMENT AS TO JURISDICTION

Appellant appeals from a final order and judgment of Appellate Division of the Supreme Court of the State of New York, Fourth Judicial Department, made and entered on November 29, 1962, unanimously affirming a judgment of the Extraordinary Special and Trial Term of the Supreme Court of the State of New York held in and for Oneida County.

Opinions Below

The order and judgment of the Appellate Division of the Supreme Court of the State of New York, Fourth Judicial

Department, was made without an opinion, as reported in *People* v. *Laino*, 17 A. D. 2d 1029. There is no other reported opinion.

Jurisdiction

The judgment of the Extraordinary Special and Trial Term of the Supreme Court of Oneida County, New York State, was entered December 1, 1961. The order and judgment of the Appellate Division, Fourth Judicial Department, affirming the judgment of the Extraordinary Special and Trial Term was made and entered November 29, 1962 (App., *infra*, p. 1a). Application was thereafter made to Hon. Stanley H. Fuld, Associate Judge of the Court of Appeals of the State of New York, for a certificate granting leave to appeal to that Court, and was denied by order dated January 3, 1963 (Tr. Appendix, E),[1] making the order and judgment of the Appellate Division the judgment of the Court of last resort in the State of New York.

Appellant filed the notice of appeal to this Court on February 6, 1963 (Tr. Appendix, G). Jurisdiction over this appeal lies in this Court under 28 U.S.C., sec. 1257(2). *Lathrop* v. *Donohue*, 367 U. S. 820, 824; *Hamilton* v. *Regents of University of California*, 293 U. S. 245, 257-258; *King Manufacturing Co.* v. *City Council of Augusta*, 277 U. S. 100.

---

[1] Herein "Tr." refers to the record certified to this Court by the Clerk of the County of Oneida, including the Appendix thereof.

Questions Presented

Whether,

(a) Where a state statute, enacted for the purpose of giving the state protection with respect to the persons with whom it contracts, disqualifies any person from entering into any contract with any municipality should that person refuse to execute a waiver of immunity against subsequent criminal prosecution or to testify when called before any grand jury and asked questions limited to "any transaction or contract had with the state" or "any subdivision thereof"; and

(b) Where the low bidder on a municipal contract, who executes such a limited waiver of immunity pursuant to the statute, and testifies on one occasion at a time when he remains eligible for the contract in question, is compelled, by subpoena and by judicial construction of the statute, to testify again, under the same limited waiver of immunity, *after* he had been effectively disqualified from the municipal contract in question by reason of its having been awarded to a higher bidder *following* the low bidder's initial appearance and testimony before the grand jury; and

(c) Where, further, the now ineligible low bidder thereupon moves to quash the subpoena compelling his further appearance and testimony, under the limited waiver of immunity previously executed by him at a time when his qualifications for the municipal contract were relevant to the purposes of the statute which prescribed such a waiver as a condition of eligibility for the municipal contract; and

(d) Where his motion to quash is denied and he is compelled to testify further, even though his qualifications for a municipal contract are no longer in issue; and

(e) Where this subsequent testimony is thereupon used upon a trial to convict him of various crimes and to send him to prison;—the state statute, as so construed and applied,

(1) Violates and is repugnant to the "equal protection" clause of the Fourteenth Amendment;

(2) Violates and is repugnant to the "self-incrimination" clause of the Fifth Amendment as absorbed by and made applicable to the states under the Fourteenth Amendment; and whether, accordingly,

(3) The conviction of the appellant is repugnant to and in violation of the Fourteenth Amendment and/or in violation of the self-incrimination clause of the Fifth Amendment, as absorbed and made applicable to the states by the Fourteenth Amendment, since testimony compelled from the appellant under the construction given the state statute by the state court was used as evidence against him to send him to prison.

Statutes Involved

General Municipal Law, New York State, Sec. 103-b:

> "Disqualification to contract with municipal corporations and fire districts
>
> Any person who, when called before a grand jury to testify concerning any transaction or contract had with the state, any political subdivision thereof, a public authority, or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question con-

cerning such transaction or contract, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or fire district, or with any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal or until a disqualification shall be removed pursuant to the provisions of section one hundred three-c of this article.

It shall be the duty of the officer conducting the investigation before the grand jury before which the refusal occurs to send notice of such refusal, together with the names of any firm, partnership or corporation of which the person so refusing is known to be a member, partner, officer or director, to the superintendent of public works of the state of New York and the appropriate departments, agencies and officials of the state, political subdivisions thereof or public authorities with whom the person so refusing and any firm, partnership or corporation of which he is a member, partner, director or officer, is known to have a contract. Added L. 1959, c. 605, § 2; amended L. 1960, c. 94, eff. Sept. 1, 1960; L. 1960, c. 606, § 3, eff. April 18, 1960."

Statement of the Case

In December, 1960, the Board of Contract and Supply of the City of Utica advertised for public bids on a contract to be let by that municipality for the removal of garbage and ashes (Tr. 27). The contract was to be for a period of three years and involved a total payment of three-quarters of a million dollars to whomever the contract would be awarded (Tr. 53). When the sealed public bids were opened

on December 16, 1960 (Tr. 29), the appellant, Frank Laino, was announced as being the lowest bidder (Tr. 33).

Almost immediately thereafter, at the direction of the same Special Assistant Attorney General who had previously prosecuted and convicted the appellant for a New York State Tax Law violation,[2] and who was at that very time readying the instant indictment before another Grand Jury (Tr. 60-61), a subpoena was served upon the appellant (Tr. 54) to appear before a Grand Jury on December 21, 1960 (Tr. 56). The appellant appeared on that date before the Grand Jury, under compulsion of the subpoena, and was requested by the Special Assistant Attorney General, at the outset, to execute a limited waiver of immunity under Section 103-b of the General Municipal Law (Tr. 61, 176-178)[3]. The alternative to executing the waiver, under the statute, was to be disqualified not only from the $750,000. contract for which the appellant was low bidder but from any similar public contract for a period of five years (Tr. 62; the statute, *supra*). The appellant, after conferring with counsel outside the Grand Jury room, executed the limited waiver (Tr. 177-178) and testified before the Grand Jury (Tr. 179-285).

---

[2] The State Tax Law conviction was unanimously affirmed by the Appellate Division of the Fourth Department, *People* v. *Laino*, 12 A. D. 2d 880, 211 N. Y. S. 2d 716, but was reversed by the Court of Appeals, which dismissed the indictment on the ground that the Special Assistant Attorney General had called the appellant before a Grand Jury under compulsion of subpoena and testimony was given by the appellant at a time when the appellant was a prospective defendant. The Court of Appeals held this to be in violation of the appellant's privilege against self-incrimination (*People* v. *Laino*, 10 N. Y. 2d 161; 176 N.E. 2d 571).

[3] The Special Assistant Attorney General, stating that he didn't wish the appellant to testify unless he signed the waiver, conceded that the waiver required under Section 103-b of the General Municipal Law concerned the appellant's qualifications to accept the municipal contract (Tr. 61) for which he had been low bidder.

It has been conceded by respondent that at the very time this appellant was compelled by the threat of economic sanction to execute a limited waiver of immunity and to testify before the Grand Jury, the same Special Assistant Attorney General was conducting an investigation before another Grand Jury "into the nature of tire sales undertaken by Laino-Fisk Tire Service"[4] and another tire firm to the City of Utica (Tr. 60-61). It was this other Grand Jury which ultimately indicted this appellant for the crimes of which he now stands convicted, and from which he herein appeals.

Significantly, the appellant was questioned before the Grand Jury at great length on December 21, 1960, under the limited waiver of immunity, concerning the very same tire transactions with the City of Utica concerning which the other Grand Jury later indicted (Tr. Appendix, A). Indeed, at one point when the appellant made reference to "garbage and ashes", the very substance of the municipal contract for which his qualifications were ostensibly under investigation, the inquisitor admonished him to "forget about garbage and ashes", showing interest only in the same tire transactions concerning which a case against the appellant was being presented before the other Grand Jury (Tr. 56).

In any event, on December 27, 1960, six days after his qualifications for the municipal garbage contract were supposedly being tested through his testimony given on December 21, 1960 under the limited waiver of immunity prescribed by Section 103-b of the General Municipal Law, the garbage contract was awarded to a higher bidder (Tr. 52). On the

[4] The appellant was the only active partner in this firm whose dealings with the City of Utica were under Grand Jury investigation.

very next day, December 28, 1960, the Special Assistant Attorney General caused a new subpoena to be served upon the appellant, who was now effectively disqualified with respect to the already awarded municipal contract, compelling a second appearance by him before the Grand Jury to give testimony under his limited waiver executed on December 21, 1960, executed at a time when his qualifications for the municipal contract were not academic as they now were (Tr. 287).

Counsel for the appellant immediately obtained an order to show cause why the subpoena should not be quashed (Tr. 287). A hearing on the show cause order was held on January 9, 1961 before the same justice who had previously convicted the appellant on the State Tax Law violation in a non-jury trial and who presided at the later jury trial which culminated in the instant conviction (Tr. 288). The motion to quash the subpoena was denied and on January 12, 1961 the appellant was compelled to appear again before the Grand Jury (Tr. 288).

Special Assistant Weintraub, under whose immediate direction the instant prosecution against this appellant was prepared, immediately reminded the appellant that he had signed a limited waiver of immunity on December 21, 1960 and read the provisions of Section 103-b of the General Municipal Law to him (Tr. 289-290). When the appellant asked the inquisitor whether having signed the limited waiver he was compelled to testify, the inquisitor answered "yes" (Tr. 291). The Special Assistant added only that "the only reason you can decline to answer * * * is because you have an honest belief that the question is not within the scope of the waiver" (Tr. 291). The appellant was told, however, that anything within the scope of the limited

waiver, "you must answer" (Tr. 292) because "you've already waived your right against self-incrimination" (Tr. 293). The appellant thereupon conferred with counsel outside the Grand Jury room (Tr. 293) and returned to testify. This testimony of January 12, 1961 was later used on the trial of the instant indictment (Tr. 133-171) and was a most vital cog in the prosecution's chain of evidence which led to the conviction from which the appellant now appeals to this Court on the Constitutional grounds earlier set forth.[5] The indictment itself was handed down on January 30, 1961, only 18 days after the appellant's second involuntary appearance before the "limited waiver" Grand Jury. Appellant is currently imprisoned, under a sentence of 5 to 10 years, as a consequence of the judgment herein involved.

The Federal Questions Are Substantial

By its judgment, the Appellate Division of the New York State Supreme Court has construed Section 103-b of the General Municipal Law to permit a previously executed limited waiver of immunity, executed under the prescription of that statute, to be used at a later date to compel a citizen to give *further* incriminating testimony against himself at a time when such testimony could no longer have any reasonable relationship to any constitutionally permissible objective of the legislation. More than that, the statute has been construed to permit such subsequently compelled testimony to be used to convict a citizen and to send him to jail.

---

[5] The conviction, concerning which the appellant appeals to this Court, was for the Crimes of Bribery, Grand Larceny in the First Degree, and Fraudulently Presenting Bills or Claims to Public Officers for Payment, all flowing from and related to tire transactions with the City of Utica about which the appellant was questioned at length under the "limited waiver".

1. As thus construed, Section 103-b of the General Municipal Law is not confined to the reasonable legislative purpose of affording the state, or any sub-division of the state, with an opportunity to protect itself with respect to the person with whom it is obliged, by public bidding statutes, to contract;[6] it becomes, instead, a statute which can be used to exact self-incriminating testimony from a particular class of citizens even after the state is no longer in need of the protection which the statute was designed to afford. As thus construed, the statute, we submit, is no longer a reasonable and allowable statutory discrimination, deemed inoffensive to the "equal protection" clause of the Fourteenth Amendment, since the only permissible statutory discrimination is that which is wholly relevant to the reasonable objectives of the particular legislation (*McGowen* v. *Maryland*, 366 U. S. 420, 425-426). Section 103-b. of the General Municipal Law, as it has been construed below, allows unequal application of the laws against a particular citizen or class of citizens (those who have previously signed "limited waivers" of immunity under Sec. 103-b of the General Municipal Law but who have since been rendered ineligible for, or have been effectively disqualified from, the contract for which their qualifications were to be scrutinized under the limited waivers) without any reasonable legislative purpose being served thereby and is, it is urged, repugnant and offensive to the Fourteenth Amendment. The statute, as construed, discriminates without

[6] That such is the purpose of the statute, see the Message of the Governor on approving the enactment, McKinney's 1959 Session Laws of New York, pp. 1757-1758; App., *infra*, p. (3a.) The respondent has agreed that the purpose of the statute was to give "the City an opportunity to protect itself by requiring that persons who contract with the City under certain circumstances will waive the right to be examined before a Grand Jury * * * into that contract * * * " (Tr. 6).

basis in reason or without effectuation of the purposes of the law because it allows a citizen, such as this appellant, who no longer fits into the class of persons against whom the statute was designed to give the state protection with respect to its contractual activities, to be compelled to convict himself and to carve out his own niche in prison under the apparent theory that while that citizen is no longer eligible for a particular contract (concerning which he was earlier required to give testimony under limited waiver or suffer disqualification), his further self-incriminating testimony would somehow continue to serve the "protection" purposes of the statute.

The "balancing" of public and private interests, so frequently used in determining whether or not a particular statute violates the "equal protection" clause of the Fourteenth Amendment, we think can hardly be effective to sustain Section 103-b of the General Municipal Law, as thus construed and applied, since the public interest is not on the scales to be weighed against the private interest at a time when a citizen such as this appellant is compelled to testify under the "limited waiver"[7] when the contract (concerning which he was obliged by threat of economic sanction to execute the limited waiver) had been made unavailable to him by the municipality despite his low-bidder status. It seems, indeed, that this case falls squarely within the *dicta* contained in Chief Justice Warren's concurring opinion in *Regan* v. *New York*, 349 U. S., at pages 68-69, where that Justice envisioned a comparable violation of the "equal protection" clause of the Fourteenth Amendment and wrote

[7] And is advised by the Special Assistant in the Grand Jury room that he is under compulsion to testify under the previously executed limited waiver (Tr. 292-293).

"it may well be that the waiver cannot be used to send him to the penitentiary for bribery when the same sanction would not be imposed on other witnesses giving like testimony".

2. It is urged, also, that Section 103-b of the General Municipal Law, as construed and applied below, violates the constitutional privilege against self-incrimination as contained in the Fifth Amendment of the Constitution of the United States. While the majority opinions in a previous line of cases decided in this Court (*Twining* v. *New Jersey*, 211 U. S. 78; *Knapp* v. *Schweitzer*, 357 U. S. 371; *Cohen* v. *Hurley*, 366 U. S. 117) have held that the Fifth Amendment of the Constitution of the United States has no applicability to the states, it is also abundantly clear that there has been an evolution of thinking in connection with this doctrine, progressively more pronounced, which in *Cohen* v. *Hurley, supra*, resulted in four of the present Justices of this Court[8] dissenting and supporting the view that the Fifth Amendment is controlling upon the states and secured against impairment by the states by reason of having been absorbed into the Fourteenth Amendment. Indeed, Mr. Justice Harlan, writing for the majority in *Cohen* v. *Hurley, supra*, at page 129, specifically warned:

> "This is not to say, of course, that States have free rein in the choice of means of forcing incriminatory testimony * * *."

All this suggests that it is now time for the Supreme Court of the United States to complete this process of evolution and to hold now that the Fifth Amendment, by absorption into the Fourteenth Amendment, is now applica-

[8] Chief Justice Warren, Justices Black, Brennan and Douglas.

ble to and controlling upon the various states and that, accordingly, this Court has the power to review state violations of the Fifth Amendment.

The first Mr. Justice Harlan, gave impetus to this evolution by dissenting in *Twining* v. *New Jersey, supra,* at page 126, and stating that he could not support any judgment removing the immunity from self-incrimination under the Fifth Amendment from the protection of the Fourteenth Amendment. The completion of the process of "absorption" of the first ten Amendments into the Fourteenth Amendment, as thus referred to by Mr. Justice Cardozo in *Palko* v. *Connecticut*, 302 U. S. 319, 326, which principle has been long established insofar as the First Amendment is concerned (*Edwards* v. *South Carolina*, 372 U. S. 229, 235), as well as recently established in connection with the Fourth Amendment (*Mapp* v. *Ohio*, 367 U. S. 643) and the Sixth Amendment (cf, *Gideon* v. *Wainright*, __ U. S. __, decided March 18, 1963, not yet officially reported), can no longer be delayed[9], we submit, and we believe that the instant case, if reviewed by this Court, may well constitute the vehicle upon which the evolutionary process of the absorption principle will be brought to fulfillment. The four dissents of present members of this Court in the *Anastaplo* case, 366 U. S. 82, as well as in *Cohen* v. *Hurley, supra,* would seem to indicate that appellant's urging of the absorption principle concerning the Fifth Amendment in this case should be reviewed at this time by the Court as presently constituted.

It is the contention of this appellant that under the circumstances heretofore described in this Jurisdictional State-

[9] Mr. Justice Brennan in *Cohen* v. *Hurley, supra,* at pages 158-159, has stated his belief that further limiting of the absorption principle is "indefensible".

ment, the testimony he was compelled to give on his second appearance before the Grand Jury on January 12, 1961 (Tr. 288-293), at a time when such compelled testimony under the formerly executed limited waiver of immunity could no longer have any reasonable relevancy to any constitutionally permissible legislative purpose of Section 103-b of the General Municipal Law,[10] constituted a violation of his privilege against self-incrimination as guaranteed by the Fifth Amendment and as made applicable to and controlling upon the states by absorption into the Fourteenth Amendment.

3. The question whether a limited waiver of immunity executed as prescribed in Section 103-b of the General Municipal Law, or any similar statute, can be used to compel later self-incriminatory testimony, compelled at a time when the State or Municipality was no longer concerned about the particular individual's fitness or qualifications to contract with it, is one of broad, continuing and increasing general importance to a vast number of citizens. "Protective" statutes such as Section 103-b of the General Municipal Law are increasingly in vogue. The temptation of Authority to use such a statute as a weapon to obtain self-incriminatory testimony against a citizen, and to convict and imprison him by the use of such testimony, obtained even where the "protective" purpose of the statute is no longer in play, may be great. The question herein raised in connection with Section 103-b has never been previously raised in any reported decision and has certainly never been passed upon by this Court.

---

[10] And after his attempts to quash the subpoena were judicially thwarted (Tr. 287-288).

The questions raised herein will obviously occur again. The principles involved in these questions touch upon the most basic constitutional principles and involve the constitutional privileges and immunities of all citizens.

How the Federal Questions Were Preserved

A reading of the transcript certified to this Court will demonstrate that the questions herein raised were preserved at all stages of the proceedings in the state courts. The repugnancy of Section 103-b to the Fourteenth Amendment was persistently urged (Tr. 1-3, 9, 17, 22, 24, 71, 79, 170-171; Point Fourth of Appellant's Brief in the Appellate Division of the Fourth Department[11]). The violation of the appellant's constitutional rights under the Fifth Amendment, as absorbed by the Fourteenth Amendment, was also urged at all stages of the proceedings below (Tr. 3, 20-21, 24, 79; Point Fourth of Appellant's Brief in the Appellate Division of the Fourth Department). The respondent argued at length and vigorously against these contentions (Tr. 4-7; pp. 124-146 of Respondent's Brief in Appellate Division, Fourth Department). The trial court made a direct ruling on these questions (Tr. 10)[12]. The Appellate Division, by its affirmance, necessarily rejected the position taken by the appellant on these questions. The record is replete with objections, exceptions and motions for mistrial predicated upon the appellant's contentions with respect to these questions. These questions, accordingly, have been fully preserved for review by this Court.

---

[11] See Tr. App., F.

[12] "That it is not a denial of equal protection of law or an infringement of any constitutional right. Yes. The Court so holds. All right. The motion is therefore denied."

CONCLUSION

Appellant submits that an authoritative determination of the questions presented on this appeal are vital in connection with the enactment and administration of statutes such as Section 103-b of the General Municipal Law. Now would appear to be the time when the constitutional limits of such statutes be prescribed by this Court. The issues presented on this appeal, affecting a large number of persons, must necessarily be viewed as being of general importance. If this Court should conclude that the appeal jurisdiction is not properly invoked, it is respectfully submitted that the questions and considerations hereinabove stated sufficiently justify the exercise of this Court's discretionary certiorari jurisdiction. 28 U.S.C. sec. 2103.

Respectfully,

EDWARD H. LEVINE
New York, New York
Counsel for Appellant

VERNON C. ROSSNER
New York, New York
With him on the Statement

April, 1963

APPENDIX

Judgment Appealed From

At a term of the Appellate Division of the Supreme Court of the State of New York in and for the Fourth Judicial Department, at the City of Rochester, N. Y., commencing on the 13th day of November, 1962.

Present:

Hon. ALGER A. WILLIAMS,
Presiding Justice.
" HARRY D. GOLDMAN,
" PHILIP HALPERN,
" WILLIAM E. McCLUSKY,
" FREDERIC T. HENRY,
Associate Justices.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

vs.

FRANK N. LAINO and JOSEPH BOLLETTIERI,

Appellants.

The above named Frank N. Laino, one of the defendants in this action, having appealed to the Appellate Division of

Judgment Appealed From

the Supreme Court, Fourth Department, from a judgment of conviction of the Extraordinary Special and Trial Term of the Supreme Court, Oneida County, entered in the office of the Clerk of the County of Oneida on the 1st day of December, 1961, and the said appeal having been argued by Mr. Edward H. Levine, of counsel for the appellant, and by Mr. Robert E. Fischer, of counsel for the respondent, and due deliberation having been had thereon, it is hereby

ORDERED that the judgment of conviction so appealed from be and the same hereby is unanimously affirmed.

Enter.

ALGER A. WILLIAMS

Entered 29th day of November, 1962.

LESTER A. FANNING
Clerk.

McKinney's 1959 Session Laws of New York (pp. 1757-1758)

"On approving L. 1959, c. 605, which disqualifies a person who refuses to testify before a grand jury from obtaining public contracts for a period of five years, the Governor stated:

April 21, 1959

* * * * *

In a recent grand jury investigation, a number of persons who had transacted business with a governmental agency refused to answer questions about those transactions put to them by the grand jury. In its report, the grand jury recommended consideration of amendments to the law which would disqualify such persons from further transactions with public agencies.

Unlike a private person who may contract with whom he wishes, a public agency usually lets contracts by public auction and is required to accept the lowest bid. For that reason, it would seem appropriate to disqualify the bids of persons who are unwilling to disclose to a grand jury relating to some prior contract with the public. Likewise, it would seem appropriate that public contracts should provide that the benefits accruing under them be available only so long as the beneficiary is willing, when required by a grand jury, to disclose any information he may have as to a public contract.

* * * * *

The bill is approved.

Nelson A. Rockefeller"